bsb

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 933 OF 2003**

Rajesh Laxman Datela ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. S.V. Marvadi for the appellant.

Smt. S.D. Shinde, A.P.P. for the State.

**CORAM: V.G. PALSHIKAR &**
**SMT. NISHITA MHATRE, JJ.**

**DATED: 22ND NOVEMBER, 2006.**

**ORAL JUDGMENT (PER SMT. NISHITA MHATRE, J.)**:

1. The judgment impugned in this appeal is that of the 1st Ad-hoc Additional Sessions Judge, Palghar, in Sessions Case No. 212 of 2001. The accused has been convicted and sentenced under Section 302 of the Indian Penal Code.

2. The case of the prosecution is that the deceased Aarati and the accused were residing in the same vicinity. The accused was insisting that Aarati should marry him, however, these advances made by the accused were rebuffed by the victim. On 14.10.2000 at about

1.30 pm the victim left her home for purchases. The accused obstructed her way near the L.B.S. High School. He assaulted the victim with a chopper on her abdomen. When the victim was being carried away by her uncle to hospital, the accused assaulted her again on her wrist. Two employees of the school who had witnessed this incident rushed to the police station. The police came to the spot of the incident and arrested the accused. The victim was first taken to the local hospital and then treated in Bhagwati Hospital at Borivali. However, she succumbed to her injuries at about 7.30 pm on that day. The accused was charged under Section 302 of the Indian Penal Code and his trial was committed to sessions. He has been convicted and sentenced to life imprisonment. It is this judgment that the accused impugns in the present appeal.

3. The prosecution has relied on 11 witnesses in order to prove its case against the accused. PW-1, PW-4, PW-5 and PW-6 are eye witnesses. These witnesses have seen the actual incident and the assault on the victim. PW-4 is the mother of the victim. She has spoken about the previous conduct of the accused when he pestered the victim to marry him. She has stated that she left the house at about 1.00 pm and within 2-3 minutes she heard her daughter shout that Raju, the accused, had assaulted

her. The incident had occurred outside the house of one Sanju Wayada who also raised an alarm. This witness states that she rushed out of her house and found that the victim was unconscious and had a bleeding injury on her abdomen. The accused who was present at the spot was brandishing the chopper and attempting to obstruct the victim from being taken to the hospital. The victim was lifted by PW-5 and they moved towards an autorikshaw when the accused rushed at them and assaulted the victim again on her wrist with the chopper. According to these witnesses, the victim mentioned to them that the accused had killed her and she then cursed him.

4. The uncle of the deceased, PW-5 corroborates this evidence of PW-4. He is the person who lifted the victim and carried her towards the hospital. He stated that the accused after having injured the victim initially in the abdomen, again assaulted her on her right wrist with the chopper. He has also stated that the victim uttered the curses that her mother had recounted in her deposition.

5. PW-6 is the next eye witness who corroborates the testimony of PW-4. He was employed in the school which was close to the spot of the incident. He states that the victim’s mother had rushed to him for help. He also

has spoken about the fact that he and one of the school peons had heard the victim's cries after she was assaulted.

6. PW-1 is the complainant and the brother of the victim. He heard the shouts of his sister after she was assaulted. He assisted his uncle and mother to carry his sister to the hospital as she had sustained a bleeding injury. This witness has spoken about the fact that the victim was injured on the abdomen and the right wrist. According to him, the accused was standing at the corner of school and was carrying a chopper. This witness claims that the accused told them while they were carrying the victim to the hospital, that he had inflicted the wounds since they had not allowed him and the victim to get married. Therefore, the evidence of the eye witnesses proves that there was an assault on the victim, initially on her abdomen. The accused was seen assaulting her again on the right wrist. The witness PW-1 and PW-5 had noticed the accused standing nearby armed with a chopper. They had heard the victim utter the words that the accused had assaulted her. They had also heard her curse him that the same fate would befall him.

7. Considering the medical evidence which is brought on

record by the prosecution by examining PW-10 and PW-11, the injuries sustained by the victim as mentioned by the medical officers, match the ocular evidence on record. PW-11, who treated the victim at the Bhagwati Hospital, has stated that the injury sustained could be caused by a sharp object like the chopper which was seized. This doctor states that the patient was referred to the hospital at about 1.30 pm. PW-10 who conducted the autopsy has opined that the victim died because of the haemorrhage and shock caused by the stab wound over the abdomen coupled with the multiple incised wounds.

8. PW-8 is the doctor who was attached to the Rural Hospital at Manor, at the relevant time. He had examined the accused at about 5.15 pm on 14.10.2000. According to this witness, the accused had a cut over the abdomen which was skin deep. The doctor has opined that the nature of the injury was simple and the probable cause was due to a hard and sharp object. The doctor has also opined that the injury was self-inflicted.

9. The panch witnesses examined as PW-2 and PW-3 have proved the spot panchnama and the seizure panchnama respectively. The blood stained chopper was seized from the accused as also his clothes. They were sent for

analysis to the chemical analyzer.

10. PW-7 is the investigating officer. He has stated that, at about 1.45 pm a school peon came running to the police station informing them that somebody had assaulted the victim near the school. PW-7 rushed to the spot and found the accused was standing there brandishing the chopper. The accused was at that point of time shouting aloud that he had assaulted the victim since he wanted to kill her. The accused also threatened him and the other strangers who were with him, however, they overpowered the accused and seized the chopper from his hand. This witness has stated that the accused had sustained an injury.

11. PW-9, the investigating officer proved the panchanamas i.e. spot panchanama, seizure panchanama as well as the map showing the spot of the incident. The chemical analyzer’s reports have also been produced by this witness. The chemical analyzer’s reports which are produced on record indicate that the chopper was stained with human blood. The clothes of the deceased and the accused were stained with blood of group "A", however, neither the blood of the victim nor the accused could be analyzed as the results proved to be inconclusive.

12. Having scrutinized the evidence on record and reappreciated the same, we find that the findings of the Sessions Court are correct. Although the first assault has not been witnessed by any of the witnesses examined by the prosecution, the second assault on the wrist has been seen by atleast three witnesses. However, all the eye witnesses have seen the accused carrying the blood stained chopper and have heard the victim crying out that the accused had assaulted her. All the witnesses have stated that the accused was standing close to the scene of offence and was attempting to obstruct their way when they were taking the victim to hospital. In our opinion, the evidence on record proves that the assault on the victim is attributable to the accused only and nobody else.

13. The learned counsel for the accused tried to impress upon us that the time of the incident as mentioned by each of the witnesses is different. According to him, while PW-1 states that the incident occurred at about 1.30 pm, PW-4 contends that it happened about 2-3 minutes after 1.00 pm. PW-5 on the other hand states that it occurred around 1.30 pm. However, PW-7, the police officer who overpowered the accused has stated that the peon from the school came running to the police station at about 1.45 pm The

doctor examined as PW-11 has stated that the victim was brought to the hospital at about 1.30 pm. According to the learned counsel, these various points of time would indicate that the prosecution has not been able to establish the time of the incident. That being the position, submits the learned counsel, the theory of the prosecution that the accused had inflicted the fatal blows on the victim cannot be accepted. In our opinion, the time of the incident mentioned by the witnesses is not at great variance. It is between 1.00 pm and 1.30 pm. In fact, the time is immaterial since there are eye witnesses to the incident.

13. We have considered the judgment impugned in this appeal. In our view, the learned trial Judge has marshalled the facts correctly and has assessed the evidence in an appropriate manner. We confirm the findings of the learned trial Judge and dismiss the appeal. Appeal dismissed.

.....